

## REMARKS

Claims 1-3 and 6-32 are pending in the application. It is gratefully acknowledged that Claims 29-32 have been allowed. It is also gratefully acknowledged that Claims 6-13 and 18-28 have been objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form to include all of the limitations of the base claim and any intervening claims. The Examiner has again rejected Claims 1, 2, 14 and 16 under 35 U.S.C. §103(a) as being unpatentable over Makela et al. (U.S. Publication 2003/0152097) in view of Love et al. (U.S. Publication 2004/0116143). The Examiner has rejected Claims 3, 15 and 17 under 35 U.S.C. §103(a) as being unpatentable over Makela et al. in view of Applicants' Admitted Prior Art (APA).

Regarding the rejection of independent Claims 1 and 14, the Examiner states that Makela et al. in view of Love et al. renders the claims unpatentable. Makela et al. discloses transmitting packet data; and, Love et al. discloses a method and apparatus for providing a distributed architecture digital wireless communication system. Each of independent Claims 1 and 14 recite, at least, wherein the weighting factors are determined **individually** for the scheduling commands. The Examiner cited Makela et al. at paragraph [0029] as disclosing this element. Paragraph [0029] of Makela et al. states, (emphasis added):

[0029] In FIG. 2, separate send **queues** 21, 22 and 23 are assigned for each of the three traffic handling priorities in the interactive traffic class. The data packets are sent forward from the **queues** e.g. by using WFQ (Weighted Fair Queuing) method. The WFQ function 24 may be implemented such that the **weights of the queues** are configurable by the user of the network element (e.g. the operator of the network 2 or the user of the mobile station 1). The embodiments of the present invention enable dynamic adjustment of the **weights of the queues** in accordance with the number of the PDP contexts that are using the queues. The **weights of the queues** may be assigned and/or the dynamic changing of the weights is preferably implemented during the activation/deactivation of the PDP contexts i.e. the logical connections between the user 1 and the access point 16. By means of the dynamic adjustment of the weights the relative priorities of the data packets in the interactive traffic class may remain the same regardless of the number of the active PDP contexts.

Since Claim 1 and 14 recite that the weighting factors are determined individually for the scheduling commands and Makela et al. recites that weights are determined, not individually, but for the queues, Makela et al. cannot be used to render the Claims unpatentable. Love et al. does not cure this defect of Makela et al.

The Examiner responded to this argument in the present Office Action. The Examiner states in the Response to Arguments section of the Office Action, starting on page 2, that assigning weights to data units as disclosed by Makela et al. is equivalent to individually assigning weights to scheduling commands as recited in the claims of the present application. Assigning weights to data units can not be equated with assigning weights to scheduling commands.

The Examiner then opines that since Makela et al. adjusts its queue weights based on an amount of traffic, this somehow translates to the weighting factors are determined individually for the scheduling commands as recited in Claims 1 and 14. The Examiner actually states the Makela et al. discloses that weighting is determined individually for queues. Again, based on the Examiner's own statements, weighting queues is not and cannot be equated with the weighting factors determined individually for the scheduling commands.

The Examiner also states that Love et al. also teaches that the weighting factors are determined individually for the scheduling commands, and cites the scheduling commands of Love et al. Since nothing in Makela et al. nor Love et al. even remotely suggests determining weighting factors for scheduling commands, this argument must also fail.

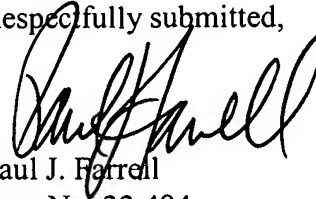
Based on at least the foregoing, withdrawal of the rejection of independent Claims 1 and 14 is respectfully requested.

Independent Claims 1 and 14 are believed to be in condition for allowance. Without conceding the patentability per se of dependent Claims 2, 3 and 15-17, these are likewise believed to be allowable by virtue of their dependence on their respective amended independent

claims. Accordingly, reconsideration and withdrawal of the rejections of dependent Claims 2, 3 and 15-17 is respectfully requested.

Accordingly, all of the claims pending in the Application, namely, Claims 1-3 and 6-32, are believed to be in condition for allowance. Should the Examiner believe that a telephone conference or personal interview would facilitate resolution of any remaining matters, the Examiner may contact Applicants' attorney at the number given below.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul J. Farrell", written over the typed name.

Paul J. Farrell

Reg. No. 33,494

Attorney for Applicant

DILWORTH & BARRESE  
333 Earle Ovington Blvd.  
Uniondale, New York 11553  
Tel: (516) 228-8484  
Fax: (516) 228-8516

PJF/MJM/dr